

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.714 OF 2003
WITH
CIVIL APPLICATION IN 1003 OF 2003

Radheshyam Gupta. ..Appellant.

V/S.

The Municipal Corpn. of Gr.Mumbai..Respondent.

Mr.J.J.Shah for appellant.

Mr.R.A.Malandkar, AGP for Respondent.

CORAM: A.M.KHANWILKAR, J

DATE : JANUARY 9, 2006.

P.C. :

1. Heard counsel for the parties.
2. This appeal takes exception to the order passed by the City Civil Court, Bombay dated 4th September, 2003 in Notice of Motion No.3448 of 2003 in L.C.Suit No.4115 of 2003. The said suit was filed by the appellant questioning proposed action of the Corporation in terms of section 354-A of the B.M.C.Act vide notice dated 10th January, 2003. The trial court refused to grant ad-interim relief for reasons separately record in the order.
3. However, what is relevant for our purpose is

that it is undisputed position that the structure in question has been fully completed and is presently being used for Commercial activities. In that sense, the purpose for which the said notice was issued is worked out. The appropriate course open in the fact situation of the present case is to initiate appropriate proceedings in respect of the said structure, if the same is noticed to be unauthorised and cannot be regularised by the Corporation. Those proceedings will have to be decided on its own merit.

4. For the nature of order I propose to pass, nothing will survive for consideration even in the suit instituted by the appellant being L.C.Suit No.4115 of 2003. Parties agree that they will appear before the trial court and bring to the notice of the trial court the nature of order passed by this court in the present appeal so as to dispose of the suit on that basis. Accordingly, this appeal is disposed of with the following order.

5. It will be open to the defendant Corporation to take action in respect of the disputed structure in accordance with law on the grounds as may be permissible. All questions in that behalf are left open.

6. Appeal disposed of on the above terms.

7. In view of this order, Civil Application No.1003 of 2003 is disposed of accordingly.